76-512

FILED
OCT 12 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. .....

THELMA B. STANTON,
Appellant,

v.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

JURISDICTIONAL STATEMENT

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OPINION BELOW

The opinion of the Supreme Court of the State of Utah is reported at 552 P.2d 112 (Utah 1976) and is set forth in the appendix, infra, pages 22a through 34a. It has not been published in the official Utah Reports.

JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(2), this being an appeal which draws

into question the validity of 15-2-1 Utah Code Annotated 1953, infra page 3, on the ground that it is repugnant to the constitution of the United States. This statute was declared unconstitutional by the United States Supreme Court in *Stanton v. Stanton*, 421 U.S. 7 (1975), as a violation of the Fourteenth Amendment to the Constitution of the United States. The statute was revalidated by the Utah Supreme Court in derogation of this court's mandate. Jurisdiction is sustained by *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821); and *Tyler v. Magwire*, 84 U.S. (17 Wall) 253 (1873), among other precedent.

The judgment sought to be reviewed was entered by the Utah Supreme Court on June 23, 1976, infra at pp. 22a through 34a. Appellant's petition for rehearing was denied by the Utah Supreme Court on July 14, 1976, infra at p. 35a. A timely notice of appeal to this court was filed in the District Court of Salt Lake County, State of Utah, on September 29, 1976, infra at p. 36a. The opinion of the Utah Supreme Court, which revalidated the constitutionality of former 15-2-1, is appropriately brought before this court by appeal and as an exercise of this court's continuing jurisdiction to supervise compliance with its mandates and enforce the law of its cases.

In the event that the court does not consider appeal the proper mode of review, appellant requests that the papers whereupon this appeal is taken be regarded and acted upon as either a petition for writ of certiorari

pursuant to 28 U.S.C. § 2103 or a motion and petition for a writ of mandamus pursuant to 28 U.S.C. § 1651(a) and Rule 31, Rules of the Supreme Court. Jurisdiction on these alternate grounds is sustained by ***NAACP v. Alabama***, 360 U.S. 240 (1959) and *Deen v. Hickman*, 358 U.S. 57 (1958).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III, Sections 1 and 2, Article VI, Clause 2, and Amendment XIV, United States Constitution.

Also involved is 15-2-1 Utah Code Annotated 1953 (Utah Code Replacement Volume 2A, page 475) which provides:

> The period of minority extends in males to the age of 21 years and in females to that of 18 years; but all minors obtain their majority by marriage.

[This statute was amended by the Utah Legislature, L.U. 1975, Ch. 39, §1 (Utah Code Annotated Replacement Volume 2A, 1975 Pocket Supplement, p. 93) to fix the age at majority at 18 years for both males and females, but the amendment came after all rights had accrued in this case, and the earlier statute is the one at issue.]

QUESTION PRESENTED

Whether the Utah Supreme Court has revalidated the constitutionality of former 15-2-1 Utah Code An-

notated 1953, in violation of the decision and mandate of this court, and has, in doing so, violated the equal protection clause, the supremacy clause, and the supreme judicial power of this court.

STATEMENT

Appellant and appellee were divorced on November 29, 1960, and a decree of divorce was entered which ordered the appellee to pay appellant child support for each of two children. The decree did not specify when child support should terminate. When the female child attained the age of 18 years, appellee ceased making payments for her support.

Appellant sought a judgment for past due support money for her daughter, which had accrued. The judgment was refused by the trial court in an order dated June 13, 1973, on the ground that under 15-2-1 Utah Code Annotated 1953, the daughter attained her majority when she became 18 years of age, and that the obligation of the appellee to pay support money for her ended at that time.

The Utah Supreme Court affirmed the district court on January 4, 1974, and ordered that, in light of 15-2-1, appellee was not obligated to pay support for the female child. The Utah Supreme Court explicity rejected appellant's Fourteenth Amendment challenge to 15-2-1 Utah Code Annotated 1953. A petition for rehearing was denied on January 30, 1984.

Appellant appealed to this court on the ground that

15-2-1 violated the Fourteenth Amendment to the Constitution of the United States in that it discriminaed against females because of their sex and, therefore, denied them equal protection of the laws. Notice of appeal to this court was filed on March 5, 1974.

This court agreed with appellant and on April 15, 1975, entered its opinion in *Stanton v. Stanton*, 421 U.S 7 (1953), infra at pp. 1a through 16a, holding that 15-2-1 was unconstitutional. It reversed the decision of the Utah Supreme Court and remanded the case to the Utah Supreme Court for its determination of *when* child support payments should terminate for both males and females. The May 13, 1975, mandate of this court to the Utah Supreme Court, infra, at pp. 17a through 18a, provided:

> "The cause is remanded to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the said appeal notwithstanding."

The mandate also awarded appellant the sum of $437.38 for her costs of the appeal.

On June 6, 1975, appellant moved the Utah Supreme Court for a review of this court's mandate, but the case was remanded, without directions, to the District Court of Salt Lake County for further proceedings, infra at p. 19a.

On September 10, 1975, the district court deter-

mined that for purposes of support, children of both sexes attain their majority at age 21, and entered an amended judgment for appellant in the amount of $2,700.00 as past due support money, together with interest theron in the amount of $508.80, and $437.38 awarded to appellant for her costs by this court, infra p. 20a.

This judgment was appealed to the Utah Supreme Court and on June 23, 1976, that court reversed the district court's judgment, including this court's award of $437.38 to appellant for her costs. Appellant filed a timely petition for a rehearing in which she argued, among other things, that the Utah Supreme Court's decision (1) evaded the mandate of this court in violation of the supremacy clause of Article VI, United States Constitution, (2) failed to follow the law of the case established in the *Stanton v. Stanton* decision of this court, and (3) deprived the appellant of the costs awarded to her by this court. Appellant's petition for rehearing was denied on July 14, 1976. Notice of appeal to this court was filed in the District Court of Salt Lake County, State of Utah, on September 29, 1976.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

In *Stanton v. Stanton*, supra, this court held that appellant had standing to raise the constitutional issue, and said:

> * * * under any test—compelling state interest, or rational basis, or something in between—§ 15-2-1, in the context of child support does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.

The case was remanded to the Utah Supreme Court to resolve the one remaining narrow issue: "*when* the appellee's obligation for his children's support, pursuant to the divorce decree, terminates under Utah law." Resolution of this issue was to be by "further proceedings not inconsistent with this opinion."

During its January 1975 session, the Utah legislature amended section 15-2-1 to provide that both males and females attained their majority at age 18, but provided that, in divorce actions, the court could order support to age 21. The question presented to the Utah court was whether the trial court could award support to age 21 in the instant case.

On June 23, 1976, the Utah Supreme Court held in a 3-2 decision that *the daughter* was not entitled to support beyond the age of 18. In so holding, the Utah, court disregarded the decision, mandate and law of this court as announced in *Stanton v. Stanton*, supra, and announced its approval of differences in the age of majority for males and females. In discussing former 15-2-1, which this court declared to be unconstitutional, the Utah court said:

> Obviously the two provisions of the statutes are separable and the Supreme Court of the United States in remanding this matter directed

that we decide which age was correct and then legislate a bit on our own and say that the age of majority so chosen for the one sex is also the age of majority for the other sex.

The oath we took when chosen as justices of the Supreme Court of Utah forbids us to encroach on the duties and functions of the legislature. However, we need not make any such determination. The age of the male child in this divorce case has never been called into question. Counsel for the ex-wife raises a question as to when the girl child became of age. The Supreme Court never held that she did not become of age when she reached the age of 18 years.

We have said too many times to require citations that a statute is presumed to be valid unless it clearly appears to be in conflict with some provision of the Constitution. One looks in vain for some provision of the Constitution which says a girl does not become of age at age 18, and so we must hold that a girl does reach her majority at that age.

The Legislature of Utah, in an attempt to satisfy the justices of the Supreme Court of the United States, passed an amendment to Section 15-2-1, U.C.A. 1953, so that it now reads:

> The period of minority extends in males and females to the age of eighteen years: . . .

It thus is obvious that the statute holding that girls attained their majority at age 18 was constitutional.

At this juncture, the Utah Supreme Court went on to dispute the petitioner's *standing* to raise the child support issue, despite the fact that this Court had ex-

pressly resolved that question in petitioner's favor. The Utah Court said:

> The claim is made that a difference in the age at which a person attains majority is a denial of equal protection of the law. Even if that be true the constitutionality of a statute can be raised only by one who has an interest in the lawsuit. Neither the boy nor the girl is a party to, nor interested in, this matter. It is only the parents who are fussing about who is obligated by the decree to give support. There is no question about the fact that each child has been properly supported.
>
> By our statute both parents are charged equally with the duty to support and educate the children. The question before us is the interpretation to be given to the decree of divorce from which no appeal has ever been taken by either party. That decree is final and cannot now be changed. At the time the decree was made everybody knew that for almost one hundred years the age of majority for girls was and had been 18. The judge and the parties to this proceeding all assumed that when the decree stated that the father should be the one to furnish the support for the children during their minority it meant that the father should furnish the support for the son until he reached 21 and for the daughter until she reached age 18. No honest interpretation of that decree can be made to the contrary.
>
> If the girl needs support after age 18, then if she be a minor, as claimed by the mother (which she is not), each parent is liable for her support and the burden cannot be cast upon just one of them.

In steadfast derogation of this court's decision, the Utah Supreme Court refused to hold that the age of majority for males and females must be the same. The Utah court said:

> If in a proper case it could be held that it is a denial of the equal protection of the law to recognize that there is a difference in age when the sexes mature, would it not also be a denial of equal protection to enable a female to marry at age fourteen while the male in order to marry must be 16?
>
> The common law recognized this difference in maturation when it provided that girls could give consent to marriage at age 12, while a boy had to be 14 to give consent.
>
> Regardless of what a judge may think about equality, his thinking cannot change the facts of life. The records of the marriage department in Salt Lake County show that 62 per cent of all women who get married do so between the ages of 14 and 21, while only 25 per cent of men who marry are under 21 years of age.
>
> To judicially hold that males and females attain their maturity at the same age is to be blind to the biological facts of life.

Finally, the Utah Supreme Court reversed the district court judgment without reserving appellant's right to the award of costs granted to her by this court.

The constitutional questions presented on this appeal were raised before the Utah Supreme Court in appellant's petition for rehearing, where appellant argued that the Utah Court had reaffirmed its prior decision, had evaded the mandate of this court, had again denied appellant equal protection, had taken away a cost judgment awarded by this court, and had violated the Supremacy clause of Article VI, United States Constitution.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This court rarely is called upon to uphold its own decision and mandate in the face of steadfast resistence by a state court, but when questions of constitutional supremacy are in issue such action is essential to establish a proper relationship between the highest courts of the federal and state governments. The decision of the Utah Supreme Court not only deprives Utah women of a constitutional right to equal protection, it also rejects fundamental constitutional principles of our federal system of government, which require the obedience of state courts on matters of federal law. The United States Constitution prohibits such judicial insurrection. If it is permitted to go unchallenged, the established federal rights of Utah citizens will be seriously jeopardized.

Article VI, clause 2, United States Constitution (the Supremacy Clause) provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing

in the Constitution or Laws of any State to the Contrary notwithstanding.

For 160 years it has been settled law that this Supremacy Clause of the United States Constitution operates on the judiciary as well as the legislature, and that state courts are bound by decisions of the United States Supreme Court with respect to interpretations of federal law. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

Article III, Section I, United States Constitution provides:

> The judicial Power of the United States, shall be vested in *one* Supreme Court . . . (Emphasis added)

Section 2 of that same Article goes on to define the extent of this power as follows:

> The judicial Power shall extend *to all cases*, in Law and Equity, arising under this Constitution. . . . (Emphasis added)

Justice Story in *Martin v. Hunter's Lessee*, supra, explained the relationship between the United States Supreme Court and the state courts in these historic words:

> From the very nature of things, the absolue right of decision, in the last resort, must rest somewhere —wherever it may be vested it is susceptible of abuse. In all questions of jurisdiction the inferior, or appellate court must pronounce the final judgment; and common sense, as well as legal reason-

ing has conferred it upon the latter. 14 U.S. at 344-45.

* * *

This is not all. A motive of another kind, perfectly compatible with the most sincere respect for state tribunals, might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of *uniformity* of decisions throughout the whole United States, upon all subjects within the preview of the United States, upon all subjects within the purview of the constitution. Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself. If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils. 14 U.S. at 347-48.

See also *Cohens v. Virginia*, supra, 19 U.S. at 285, 6 Wheat, at 413-14.

Hamilton and Madison argued in favor of state judiciaries being subordinate to the Supreme Court in interpreting constitutional issues and expressed their concern that the states should not be empowered to render impotent the rights of the people recognized by the Constitution and by federal law. *The Federalist No. 44* at 147 (Great Books ed. 1952) (J. Madison) and *No. 80*, at 235 (A. Hamilton); III M. Farrand, *The Records of the Federal Convention of 1787* at 527 (1911).

And in *Ableman v. Booth*, 62 U.S. (21 How.) 506 (1858), where Chief Justice Taney, speaking for the Court, rebuked the Wisconsin Supreme Court for denying the validity of an act of Congress and disregarding a writ of error that had been issued from the United States Supreme Court, it was said:

> [I]t is manifest that this ultimate appellate power in a tribunal created by the Constitution itself was deemed essential to secure the independence and supremacy of the Genral Government in the sphere of action assigned to it; to make the Constitution and laws of the United States uniform, and laws of the United States uniform, and the same in every State; and to guard against evils which would inevitably arise from conflicting opinions between the courts of a State and of the United Stats, if there was no common arbiter authorized to decide between them. 62 U.S. at 518-19.

By its decision, the Utah Supreme Court has registered its defiance of these principles upon which our system of government was founded. Three justices of that court have violated their official oath to "support,

obey and defend the Constitution of the United States." Article IV, Section 10, Utah Constitution. This is not a case where a state tribunal registers its disagreement with the decision of this court and grudgingly subordinates itself to that decision, as would be within the Utah court's perogative. This is a case of intransigence marked by reaction and disregard of the rule of law.

Nor is this case an unexpected aberration. The history of the Utah Supreme Court is marked by instances of similar rebellion. In *State v. Phillips*, 540 P.2d 936 (Utah 1975), the Utah court denied the applicability of the freedom of speech provisions of the First Amendment as a protection of individual rights against state governments, saying:

> [T]his provision [the first amendment] is simply, solely, expressly and utterly, nothing more and nothing less than a limitation upon the Congress of the United States and the powers of the federal government. 540 P.2d at 938.

An expanded discussion of the *Phillips* decision, and other examples of the Utah Supreme Courts unorthodox judicial pronouncements, are contained in Firmage, *The Utah Supreme Court and the Rule of Law: Phillips and the Bill of Rights in Utah*, 1975 Utah L.Rev. 593.

The citizens of every state, including Utah, are entitled to expect and demand that their federal constitutional rights will be upheld regardless of where they reside. The decision of the Utah Supreme Court flies in

the face of these rights. It insolently flaunts the integrity and authority of this tribunal, and it represents a stubborn refusal to recognize error. The Utah Court has refused to abide by this court's mandate. It has refused to recognize that males and females must receive equal treatment with respect to the age of majority. It has adhered to "old notions" and 'biological laws" which have been expressly repudiated by this Court. It has insulted the position of this court by blatantly disregarding the rule of law and the law of this case with respect to appellants standing. And, it has haughtily taken from appellant the award of costs which this court expressly provided.

The outrageous nature of this decision is typified by the Utah court's own language:

> To judicially hold that males and females attain their majority at the same age is to be blind to the biological facts of life.

The decision of this Court in *Stanton v. Stanton*, supra, has been overruled by the decision of the Utah Supreme Court.

CONCLUSION

This case presents substantial federal questions relating to the application of Article VI, clause 2, Article III, Sections 1 and 2, and the Amendment XIV, United States Constitution. Probable jurisdiction should be noted, and the case should be given plenary consid-

eration, with briefs on the merits and oral argument, for resolution of those questions.

Respectfully submitted,

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APPENDIX

SUPREME COURT OF THE UNITED STATES

THELMA B. STANTON, Appellant,

v

JAMES LAWRENCE STANTON, Jr.
Appellee.

421 US 7

[No. 73-1461]

Mr. Justice Blackmun delivered the opinion of the Court.

This case presents the issue whether a state statute specifying for males a greater age of majority than it specifies for females denies, in the context of a parents obligation for support payments for his children, the equal protection of the laws guaranteed by § 1 of the Fourteenth Amendment.

I

Appellant Thelma B. Stanton and appellee James Lawrence Stanton, Jr., were married at Elko, Nevada, in February, 1951. At the suit of the appellant, they

were divorced in Utah on November 29, 1960. They have a daughter, Sherri Lyn, born in February, 1953, and a son, Rick Arlund, born in January, 1955. Sherri became 18 on February 12, 1971, and Rick on January 29, 1973.

During the divorce proceedings in the District Court of Salt Lake County, the parties entered into a stipulation as to property, child support, and alimony. The court awarded custody of the children to their mother and incorporated provisions of the stipulation into its findings and conclusions and into its decree of divorce. Specifically, as to alimony and child support, the decree provided:

> "Defendant is ordered to pay to plaintiff the sum of $300.00 per month as child support and alimony, $100.00 per month for each child as child support and $100.00 per month as alimony, to be paid on or before the 1st dav of each month through the office of the Salt Lake County Clerk." App. 6.

The appellant thereafter remarried; the court, pursuant to another stipulation, then modified the decree to relieve the appellee from payment of further alimony. The appellee also later remarried.

When Sherri attained 18 the appellee discontinued payments for her support. In May, 1973, the appellant moved the divorce court for entry of judgment in her favor and against the appellee for, among other things, support for the children for the periods after each respectively attained the age of 18 years. The court concluded

that on February 12, 1971, Sherri "became 18 years of age, and under the provisions of [§] 15-2-1 Utah Code Annotated 1953, thereby attained her majority. Defendant is not obligated to plaintiff for maintenance and support of Sherri Lyn Stanton since that date." App. 23. An order denying the appellant's motion was entered accordingly. Id., at 24-25.

The appellant appealed to the Supreme Court of Utah. She contended, among other things, that Utah Code Ann § 15-2-1 (1953)* to the effect that the period of minority for males extends to age 21 and for females to age 18, is invidiously discriminatory and serves to deny due process and equal protection of the laws, in violation of the Fourteenth Amendment and of the corresponding provisions of the Utah Constitution, namely, Art I, §§ 7 and 24, and Art IV, §1. On this issue, the Utah court affirmed. 30 Utah 2d 315, 517 P2d 1010 (1974). The court acknowledged: "There is no doubt that the questioned statute treats men and women differently," but said that people may be treated differently "so long as there is a reasonable basis for the classification, which is related to the purposes of the act, and it applies equally and uniformly to all persons within the class." 30 Utah 2d, at 318, 517 P2d, at 1012. The court referred to what it called some "old notions," namely, "that generally it is the man's primary responsi-

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*"15-2-1. Period of minority.—The period of minority extends in males to the age of twenty-one years and in females to that of eighten years; but all minors obtain their majority by marriage."

As is so frequently the case with state statutes, little or no legislative history is available on §15-2-1. The statute has its roots in a territorial Act approved February 6, 1852, Comp Laws of Utah, 1876, §1035.

bility to provide a home and its essentials," ibid.; that "it is a salutary thing for him to get a good education and/or training before he undertakes those responsibilities," 30 Utah 2d, at 319, 517 P.2d, at 1012, that "girls tend generally to mature physically, emotionally and mentally before boys"; and that "they generally tend to marry earlier," ibid. It concluded:

> "[I]t is our judgment that there is no basis upon which we would be justified in concluding that the statute is so beyond a reasonable doubt in conflict with constitutional provisions that it should be stricken down as invalid." 30 Utah 2d, at 319, 517 P2d, at 1013.

If such a change were desirable, the court said, "that is a matter which should commend itself to the attention of the legislature." 30 Utah 2d, at 320, 517 P2d, at 1013. The appellant, thus, was held not entitled to support for Sherri for the period after she attained 18, but was entitled to support for Rick "during his minority" unless otherwise ordered by the trial court. Ibid., 517 P2d, at 1014.

We noted probable jurisdiction. 419 U.S. 893 (1974).

II

The appellee initially suggests that the support issue is moot and that, in any event, the appellant lacks standing. These arguments are related and we reject both of them.

A. The mootness suggestion is based on the propositions that both the appellant and Sherri are now over 21 and that neither possesses rights that "can be affected by the outcome of this proceeding." Brief for Appellee 9. At the time the case was before us on the jurisdictional statement, the appellee suggested that the case involved a nonjusticiable political question. Appellee's Motion to Dismiss 6-7. Each approach, of course, overlooks the fact that what is at issue is support for the daughter during her years between 18 and 21. If appellee, under the divorce decree, is obligated for Sherri's support during that period, it is an obligation that has not been fulfilled, and there is an amount past due and owing from the appellee. The obligation issue, then, plainly presents a continuing live case or controversy. It is neither moot nor nonjusticiable.

B. The suggestion as to standing is that the appellant is not of the age group affected by the Utah statute and that she therefore lacks a personal stake in the resolution of the issue. It is said that when the appellant signed the stipulation as to support payments, she took the Utah law as it was and thus waived, or is estopped from asserting, any right to support payments after the daughter attained age 18.

We are satisfied that it makes no difference whether the appellant's interest in any obligation of the appellee, under the divorce decree, for Sherri's support between ages 18 and 21, is regarded as an interest personal to appellant or as that of a fiduciary. The Utah court has described support money as "compensation to

a spouse for the support of minor children." *Anderson v Anderson*, 110 Utah 300, 306, 172 P2d, 132, 135 (1946). And the right to past due support money appears to be the supplying spouse's not the child's. *Larsen v Larsen*, 5 Utah 2d 224, 228, 300 P2d 596, 598 (1956). See also *Baggs v Anderson*, ... Utah 2d ....., ..., 527 P2d 141, 143 (1974). The appellant, therefore, clearly has a "personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v Carr*, 369 US 186, 204, 7 L Ed 2d 663, 82 S Ct 691 (1962); *Flast v Cohen*, 392 US 83, 102, 20 L Ed 2d 947, 88 S Ct 1942 (1968). We see nothing in the stipulation itself that is directed to the question when majority is reached for purposes of support payments or that smacks of waiver. In addition, the Uniform Civil Liability for Support Act has been in effect in Utah since 1957. Laws of Utah, 1957, c 110, now codified as Utah Code Ann §§ 78-45-1 through 78-45-13 (Supp 1973). Section 78-45-4 specifically provides: "Every woman shall support her child." This is in addition to the mandate contained in § 78-45-3: "Every man shall support his wife and his child." "Child" is defined to mean "a son or daughter under the age of twenty-one years." § 78-45-2(4). And § 78-45-12 states: "The rights herein created are in addition to and not in substitution to any other rights."

The appellant herself thus had a legal obligation under Utah law to support her daughter until Sherri

became 21. That obligation, however, obviously was not in derogation of any right she might have against the appellee under the divorce decree. Her interest in the controversy, therefore, is distinct and significant and is one that assures "concrete adverseness" and proper standing on her part.

III

We turn to the merits. The appellant argues that Utah's statutory prescription establishing different ages of majority for males and females denies equal protection; that it is a classification based solely on sex and affects a child's "fundamental right" to be fed, clothed, and sheltered by its parents; that no compelling state interest supports the classification; and that the statute can withstand no judicial scutiny, "close" or otherwise, for it has no relationship to any ascertainable legislative objective . The appellee contends that the test is that of rationality and that the age classification has a rational basis and endures any attack based on equal protection.

We find it unnecessary in this case to decide whether a classification based on sex is inherently suspect. See *Weinberger v Wiesenfeld*, 420 U.S. 636 (1975); *Schlesinger v Ballard*, 419 U.S. 498 (1975); *Geduldig v Aiello*, 417 U.S. 484 (1974); *Kahn v Shevin*, 416 U.S. 351 (1974); *Frontiero v Richardson*,

411 U.S. 677 (1973); *Reed v Reed*, 404 U.S. 71 (1971).

Reed, we feel, is controlling here. That case presented an equal protection challenge to a provision of the Idaho probate code which gave preferences to males over females when persons otherwise of the same entitlement applied for appointment as administrator of a decedent's estate. No regard was paid under the statute to the applicants' respective individual qualifications. In upholding the challenge, the Court reasoned that the Idaho statute accorded different treatment on the basis of sex and that it "thus establishes a classification subject to scrutiny under the Equal Protection Clause." Id., at 75. The Clause, it was said, denies to States "the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." Id., at 75-76. "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v Virginia*, 253 U.S. 412, 415 (1920)." Id., at 76. It was not enough to save the statute that among its objectives were the elimination both of an area of possible family controversy and of a hearing on the comparative merits of petitioning relatives.

The test here, then, is whether the difference in sex between children warrants the distinction in the appellee's obligation to support that is drawn by the Utah statute. We conclude that it does not. It may be true, as the Utah court observed and as is argued here, that it is the man's primary responsibility to provide a home and that it is salutary for him to have education and training before he assumes that responsibility; that girls tend to mature earlier than boys; and that females tend to marry earlier than males. The last mentioned factor, however, under the Utah statute loses whatever weight it otherwise might have, for the statute states that "all minors obtain their majority by marriage"; thus minority, and all that goes with it, is abruptly lost by marriage of a person of either sex at whatever tender age the marriage occurs.

Notwithstanding the "old notions" to which the Utah court referred, we perceive nothing rational in the distinction drawn by § 15-2-1 which, when related to the divorce decree, results in the appellee's liability for support for Sherri only to age 18 but for Rick to age 21. This imposes "criteria wholly unrelated to the objective of that statute." A child, male or female, is still a child. No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas. See *Taylor v. Louisiana*, 419 U.S. 522 (1975). Women's activities and responsibilities are increasing and expanding. Coeducation is a fact, not a rarity. The presence of women in business, in the professions, in government and, in-

deed, in all walks of life where education is a desirable, if not always a necessary, antecedent is apparent and a proper subject of judicial notice. If a specified age of minority is required for the boy in order to assure him parental support while he attains his education and training, so, too, it is for the girl. To distinguish between the two on educational grounds is to be self-serving: if the female is not to be supported so long as the male, she hardly can be expected to attend school as long as he does, and bringing her education to an end earlier coincides with the role-typing society has long imposed. And if any weight remains in this day to the claim of earlier maturity of the female, with a concomitant inference of absence of need for support beyond 18, we fail to perceive its unquestioned truth or its significance, particularly when marriage, as the statute provides, terminates minority for a person of either sex.

Only Arkansas, so far as our investigation reveals, remains with Utah in fixing the age of majority for females at 18 and for males at 21. Ark Stat Ann § 57-103 (1971). See *Petty v Petty*, 252 Ark 1032, 482 SW2d 119 (1972). Furthermore, Utah itself draws the 18-21 distinction only in § 15-2-1 defining minority, and in § 30-1-9 relating to marriage without the consent of parent or guardian. See also § 30-1-2(4) making void a marriage where the male is under 16 or the female under 14. Elsewhere, in the State's present constitutional and statutory structure, the male and the female appear to be treated alike. The State's Constitution provides that the rights of Utah citizens to vote and hold office "shall not be denied or abridged on account of sex," and that

"[b]oth male and female citizens . . . shall enjoy equally all civil, political and religious rights and privileges," Art IV, § 1, and, since long before the Nation's adoption of the Twenty-sixth Amendment in 1971, did provide that every citizen "of the age of twenty-one years and upwards," who satisfies durational requirements, "shall be entitled to vote." Art IV, § 2. Utah's statutes provide that any citizen over the age of 21 who meets specified nonsex qualifications is "competent to act as a juror," Utah Code Ann § 78-46-8, may be admitted to the practice of law, § 78-51-10, and may act as an incorporator, § 16-10-48, and, if under 21 and in need, may be entitled to public assistance, § 55-15a-17. The ages at which persons may serve in legislative, executive, and judicial offices are the same for males and females. Utah Const, Art VI, § 5, Art VII, § 3, and Art VII, § p. Tobacco may not be sold, purchased or possessed by person of either sex under 19 years of age. §§ 76-10-104 and 76-10-105 (see Laws of Utah, 1974, §§ 39-40). No age differential is imposed with respect to the issuance of motor vehicle licenses. § 41-p-10. State adult education programs are open to evry person 18 years of age or over. § 53-30-5. The Uniform Gifts to Minors Act is in effect in Utah and defines a minor, for its purposes, as any person "who has not attained the age of twenty-one years." § 75-15-2.11 (Supp 1973). Juvenile court jurisdiction extends to persons of either sex under a designated age. §§ 55-10-64 and 55-10-77. Every person over the age of 18 and of sound mind may dispose of his property by will. § 74-1-1. And the Uniform Civil Liability for Support Act, noted above and in effect in Utah since 1957, im-

poses on each parent an obligation of support of both sons and daughters until age 21. §§ 78-45-2(4), 78-45-3, and 78-45-4 (Supp 1973).

This is not to say that § 15-2-1 does not have important effect in application. A "minor" may disaffirm his contract. § 15-2-2. An "infant" must appear in court by guardian or guardian ad litem. Utah Rule Civ Proc 17(b). A parent has a right of action for injury to, or wrongful death of, "a minor child." § 78-11-6. A person "[u]nder the age of majority" is not competent or entitled to serve as an administrator of a decedent's estate, § 75-4-4, or as the executor of a decedent's will. § 75-3-15(1). The statute of limitations is tolled while a person entitled to bring an action is "[u]nder the age of majority." § 78-12-36. Thus, the distinction drawn by § 15-2-1 affects other rights and duties. It has pervasive effect, both direct and collateral.

We therefore conclude that under any test—compelling state interest, or rational basis, or something in between—§ 15-2-1, in the context of child support, does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.

IV

Our conclusion that in the context of child support the classification effectuated by § 15-2-1 denies the equal protection of the laws, as guaranteed by the Fourteenth Amendment, does not finally resolve the

controversy as between this appellant and this appellee. With the age differential held invalid, it is not for this Court to determine when the appellee's obligation for his children's support, pursuant to the divorce decree, terminates under Utah law. The appellant asserts that, with the classification eliminated, the common law applies and that at common law the age of majority for both males and females is 21. The appellee claims that any unconstitutional inequality between males and females is to be remedied by treating males as adults at age 18, rather than by withholding the privileges of adulthood from women until they reach 21. This plainly is an issue of state law to be resolved by the Utah courts on remand; the issue was noted, incidentally, by the Supreme Court of Utah. 30 Utah 2d, at 319, 517 P2d, at 1013. The appellant, although prevailing here on the federal constitutional issue, may or may not ultimately win her law-suit. See *Harrigfeld v District Court*, 95 Idaho 540, 511 P2d 822 (1973); *Commonwealth v Butler*, ... Pa ....., 328 A2d 851 (1974); *Skinner v Oklahoma*, 316 U.S. 535, 542-543 (1942).

The judgment of the Supreme Court of Utah is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice Rehnquist, dissenting.

The Court views this case as requiring a determination of whether the Utah statute specifying that males

must reach a higher age than females before attaining their majority denies females the equal protection of the laws guaranteed by § 1 of the Fourteenth Amendment to the United States Constitution. The Court regards the constitutionality of Utah Code Ann § 15-2-1 (1953) as properly at issue because of the manner in which the Supreme Court of Utah approached and decided the case. But this Court is subject to constraints with respect to constitutional adjudication which may well not bind the Supreme Court of Utah. This Court is bound by the rule, "to which it has rigidly adhered, . . . never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied," *Liverpool, N. Y. & Phila. S. S. Co. v Commissioners of Emigration*, 113 U.S. 33, 39 (1885), and we try to avoid deciding constitutional questions which "come to us in highly abstract form," *Rescue Army v Municipal Court*, 331 U.S. 549, 575 (1947). Fidelity to these longstanding rules dictates that we have some regard for the factual background of this case, as fully outlined in the Court's opinion, before deciding the constitutional question that has been tendered to us.

The Utah statute which the Court invalidates "in the context of child support," ante, at 17, does not by its terms define the age at which the obligation of a divorced parent to support a child ceases. The parties concede that the Stantons could have provided in their property settlement agreement that appellee's obligation to support Sherri and Rick would terminate when both turned 18, when both turned 21, or when one turned

18 and the other turned 21. Tr. of Oral Arg 4, 14, 23. This case arises only because appellant and appellee made no provision in their property settlement agreement fixing the age at which appellee's obligation to support his son or daughter would terminate. The Supreme Court of Utah, faced with the necessity of filling in this blank, referred to the State's general age-of-majority statute in supplying the terms which the parties had neglected to specify themselves.

Had the Supreme Court of Utah relied upon the statute only insofar as it cast light on the intention of the parties regarding the child support obligations contained in the divorce decree, there would be no basis for reaching the constitutionality of the statute. In supplying the missing term in an agreement executed betwen two private parties, a court ordinarily looks to the customs, mores, and practice of the parties in an attempt to ascertain what was intended. If, upon consideration of these factors, including the age-of-majority statute, the Utah Supreme Court had concluded that the Stantons intended to bestow more of their limited resources upon a son than a daughter, perhaps for the reasons stated in the opinion of the Supreme Court of Utah, that strikes me as an entirely permissible basis upon which to construe the property settlement agreement.

On the other hand, the Supreme Court of Utah may have concluded that, the parties having failed to specify this term of the agreement, the qustion became

one of Utah statutory law rather than one of determining the intent of the parties. If that were its determination, the constitutionality of Utah Code Ann § 15-2-1 (1953), would indeed be implicated in this case.

I do not think it possible to say with confidence which of these two approaches was taken by the Supreme Court of Utah in this case. In addition to this difficulty, there is another element of attention between the claim asserted on behalf of Sherri to be treated like her brother for purposes of child support, and the actual case before us. Utah has a comprehensive scheme dealing with child support in its Uniform Civil Liability for Support Act, Utah Code Ann § 78-45-1 et seq. (Supp 1973). Under that Act, "child" is defined under the age of twenty-one years," § 78-45-2(4). Thus, for purposes of any direct claim by Sherri against appellee, Utah law treats he precisely as it does her brother. The claim asserted in this case is not by Sherri, but by her mother, and the source of any claim which the mother has against appellee necessarily arises out of the voluntary property settlement agreement which they executed at the time of their divorce.

These factors lead me to conclude that the issue which the Court says is presented by this case, and which it decides, cannot properly be decided on these facts if we are to adhere to our established policy of avoiding unnecessary constitutional adjudication. I would dismiss the appeal for that reason. *Rescue Army v Municipal Court*, supra: *Socialist Labor Party v Gilligan*, 406 U.S. 583 (1972).

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE
UNITED STATES OF AMERICA

To the Honorable the Judges of
the Supreme Court of the
State of Utah,

GREETINGS:

WHEREAS, lately in the Supreme Court of the State of Utah, there came before you a cause between Thelma B. Stanton, plaintiff and appellant, and James Lawrence Stanton, defendant and respondent, No. 13362, wherein the judgment of the said Supreme Court was duly entered on the fourth day of January A.D. 1974, as appears by an inspection of the transcript of the record from the said Supreme Court which was brought into the SUPREME COURT OF THE UNITED STATES as provided by act of Congress.

AND WHEREAS, in the 1974 Term, the said cause came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on April 15, 1975, by this Court that the judgment of the Supreme Court of Utah in this cause be reversed with costs, and that this cause be remanded to the Supreme Court of the State of Utah for further proceedings in conformity with the opinion of this Court.

IT WAS FURTHER ORDERED that Thelma B. Stanton recover from James Lawrence Stanton, Jr. Four Hundred and Thirty-seven Dollars and Thirty-eight Cents ($437.38) for her costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with rights and justice, and the Constitution and laws of the United States, the said appeal notwithstanding.

Witness the Honorable WARREN E. BURGER, Chief Justice of the United States, the thirteenth day of May in the year of our Lord one thousand nine hundred and seventy-five.

Costs of Thelma B. Stanton:

Clerk's costs	$ 150.00
Printing of record	287.38

MICHAEL RODAK, JR.,
Clerk of the Supreme Court of the
United States

SUPREME COURT

STATE OF UTAH

June 24, 1975

Mr. W. Sterling Evans

Salt Lake County Clerk

Dear Mr. Evans:

In re: Stanton v. Stanton, Supreme Court No. 13362

Salt Lake County Civil No. 125233

This case is remanded to the District Court of Salt Lake County for further proceedings as instructed by the United States Supreme Court in its decision reversing this case.

We are enclosing copies of the United States Supreme Court decision and the opinion of the Utah State Supreme Court, No. 13362, dated January 4, 1974.

Yours very truly,

ALLAN E. MECHAM
Clerk

IN THE DISTRICT COURT OF
SALT LAKE COUNTY
STATE OF UTAH

THELMA B. STANTON, *Plaintiff,* vs. JAMES LAWRENCE STANTON, JR., *Defendant.*	Amended Judgment Civil No. 125233

Plaintiff's "Motion For Entry of Judgment" came on regularly for hearing on July 29, 1975, before Honorable James S. Sawaya, one of the judges of the above-entitled court, the plaintiff being represented by her counsel, Bryce E. Roe, Esq., and the defendant by his counsel, D. Gary Christian, Esq.

The parties having stipulated in open court that the only matter for resolution was whether, in the context of divorce-decreed child support obligations, children attain their majority at age 18 or at age 21, and that the plaintiff was entitled to judgment if the age of majority is 21 years; and the court having decided that for purposes of child support, children attain their majority at age 21, and having granted the plaintiff's motion,

Now, therefore, it is ORDERED, ADJUDGED

AND DECREED that the plaintiff have and recover from the defendant the sum of $2,700.00 as past due support money for the parties' daughter, Sherri Lyn, together with interest thereon from May 1, 1973, in the amount of $508.80, and the sum of $437.38 awarded to her as costs by the United States Supreme Court in her appeal to that court, for a total judgment of $3,-646.18.

DATED this 8th day of September, 1975.

BY THE COURT:

By /s/ James S. Sawaya
District Judge

IN THE SUPREME COURT OF
THE STATE OF UTAH

Thelma B. Stanton,
Plaintiff and Respondent,

v.

James Lawrence Stanton, Jr.,
Defendant and Appellant.

No. 14268

FILED
June 23,
1976

Allan E. Mecham, Clerk

ELLETT, Justice:

This appeal challenges a judgment awarding $2,700 child support to plaintiff; together with interest and costs. The award was made for a daughter of the parties for a period ensuing after her eighteenth birthday, and culminating at her twenty-first birthday. Statutory references are to U.C.A. 1953.

In November of 1960, defendant, pursuant to an original decree of divorce, was ordered to pay plaintiff $100 per month support payments for each of the minor children of the parties. There were two children, a daughter, who was born February 12, 1953, and a son, whose birth date was January 29, 1955. Upon the daughter attaining the age of 18 years, the father, defendant, ceased paying child support for her. Subsequently, the mother, plaintiff, filed a motion for entry

of judgment against defendant for $2,700, the sum of which had accumulated since the eighteenth birthday of the daughter. The trial court denied the motion on the ground that the obligation to support, under the decree, terminated at the time the daughter attained her majority.

Plaintiff appealed to this court on the ground that the statute[1] created an unconstitutional classification in violation of the equal protection clause of the Fourteenth Amendment. This court found the statutory classification and affirmed the trial court.[2]

Plaintiff appealed the decision to the United States Supreme Court, which ruled that the classification set by 15-2-1 denied equal protection of the laws, as guaranteed by the Fourteenth Amendment.[3] However, the court observed that its holding did not terminate the controversy as it was the prerogative of the state court to determine when defendant's obligation for his children's support pursuant to the divorce decree terminated under Utah law. The matter was remanded to this court, and in turn, the case was remanded by this court to the trial court for further proceedings.

The territorial Legislature of Utah in the lawful performance of its duty enacted Section 1035, C.L.U. 1876, which reads:

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[1] Sec. 15-2-1, U.C.A. 1953.

[2] Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974).

[3] Stanton v. Stanton, 421 U.S. 7, 43 L.Ed.2d 688, 95 S.Ct. 1373 (1975).

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years;
>
> . . . .

The identical language has been carried in our law ever since.

Obviously the two provisions of the statute are separable and the Supreme Court of the United States in remanding this matter directed that we decide which age was correct and then legislate a bit on our own and say that the age of majority so chosen for the one sex is also the age of majority for the other sex.

The oath we took when chosen as justices of the Supreme Court of Utah forbids us to encroach on the duties and functions of the legislature. However, we need not make any such determination. The age of the male child in this divorce case has never been called into question. Counsel for the ex-wife raises a question as to when the girl child became of age. The Supreme Court never held that she did not become of age when she reached the age of 18 years.

We have said too many times to require citations that a statute is presumed to be valid unless is clearly appears to be in conflict with some provision of the Constitution. One looks in vain for some provision of the Constitution which says a girl does not become of age at age 18, and so we must hold that a girl does reach her majority at that age.

The Legislature of Utah, in an attempt to satisfy the justices of the Supreme Court of the United States, passed an amendment to Section 15-2-1, U.C.A. 1953, so that it now reads:

> The period of minority extends in males and females to the age of eighteen years; . . .

It thus is obvious that the statute holding that girls attained their majority at age 18 was constitutional.

The claim is made that a difference in the age at which a person attains majority is a denial of equal protection of the law. Even if that be true the constitutionality of a statute can be raised only by one who had an interest in the lawsuit. Neither the boy nor the girl is a party to, nor interested in, this matter. It is only the parents who are fussing about who is obligated by the decree to give support. There is no question about the fact that each child has been properly supported.

By our statute[4] both parents are charged equally with the duty to support and educate the children. The question before us is the interpretation to be given to the decree of divorce from which no appeal has ever been taken by either party. That decree is final and cannot now be changed. At the time the decree was made everybody knew that for almost one hundred years the age of majority for girls was and had been 18. The judge and the parties to this proceeding all assumed that when the decree stated that the father should be the one to furnish the support for the chil-

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[4] 30-2-9, U.C.A. 1953.

dren during their minority it meant that the father should furnish the support for the son until he reached 21 and for the daughter until she reached age 18. No honest interpretation of that decree can be made to the contrary.

If the girl needs support after age 18, then if she be a minor, as claimed by the mother (which she is not), each parent is liable for her support and the burden cannot be cast upon just one of them.

If in a proper case it could be held that it is a denial of the equal protection of the law to recognize that there is a difference in age when the sexes mature, would it not also be a denial of equal protection to enable a female to marry at age fourteen while the male in order to marry must be 16?

The common law recognized this difference in maturation when it provided that girls could give consent to marriage at age 12, while a boy had to be 14 to give his consent.

Regardless of what a judge may think about equality, his thinking cannot change the facts of life. The records of the marriage department in Salt Lake County show that 62 per cent of all women who get married do so between the ages of 14 and 21, while only 25 per cent of the men who marry are under 21 years of age.

To judicially hold that males and females attain their maturity at the same age is to be blind to the biological facts of life.

The order of the trial court is reversed and costs are awarded to the appellant.

HENRIOD, Chief Justice: (Concurring)

I concur in the main opinion's conclusion that this court cannot accept the decision of the lower court in determining in effect, apparently, that a female is a minor until she is 21, as to the right of support, simply because a male has been considered such by our legislature agencies ever since this writer's memory runs to the contrary.not. I agree also, that the mandate of the U.S. Supreme Court may be well intended but is somewhat wanting in specificity, apparently inviting this court to set an age to determine when support for children ends in divorce cases. This, in my opinion, is not the luxury of this court, but that of the legislative branch, nor that of the common law, since by that law there appears to have been more than one age for adulthood, with respect to males, females, criminals (of either sex), for being raped, statutorily or otherwise, etc.

Because this court upheld an award for support of a female child until she became 18, but not thereafter, certainly is no matter of res judicata as to the fact, therefore, that a male (who is not particeps here), is entitled to support, in a divorce, only until he is 18, — or that a female is entitled to support until she is 21, because he is so entitled.

The mandate of the U.S. Supreme Court is evidenced by its wording that

> The appellee claims that any unconstitutional inequity between males and females is to be remedied by treating males as adults at age 18, rather than by withholding the privileges of adulthood from women until they reach 21. This is an issue of state law to be resolved *by the Utah courts on remand*. . . . The appellant, although prevaiing here on the federal constitution issue, may or may not ultimately win her lawsuit.

Logic would seem to require that if this be the issue, it is just as much an issue, so far as constitutionality is concerned, to say that inequality "is to be remedied by treating males as adults at age 19.5, rather than by withholding the privileges of adulthood from women until they reach 19.5."

The courts of Utah did not set the ages of 21 and 18 respectively for males and females. A statute did that, and the remand mandate that the age of these people "is an issue of state law to be resolved by the Utah courts," historically has not been considered as an acceptable legal concept by our State judiciary. Our Utah legislature has tried to satisfy the mandate of the U.S. Supreme Court by setting an age certain for both sexes as pointed out in the main opinion, and I am of the opinion that if this court literally carried out the Supreme Court's remand "for further proceedings in conformity with the opinion of this court," we could set the date of adulthood, and therefore that up to which support would be obligatory at 15, 19.5, or 26, — and thus fly in the teeth of our own legislature's already enacted legislative interdiction.

CROCKETT, Justice: (Concurring)

I concur, adding the following comments:

What seems to have been almost lost sight of here is that we are dealing primarily with a controversy between two parties: the plaintiff and the defendant; and only incidentally with a universality of law.

Focusing attention directly upon the rights of the parties as they are involved in this lawsuit, there are certain principles which should be considered and applied. In he first place, as has many times been said, matters relating to the family and the support of children are equitable.[1] Wherefore, the defendant, against whom this judgment is sought, is entitled to have the considerations of equity and good conscience examined and applied in his behalf.

At the time of the entry of the decree, which ordered the defendant to pay $100 per month for each of the minor children of the parties, our statute Section 15-2-1, U. C. A. 1953, provided:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years.

It could not be plainer that under both the statutory and decisional law of this State as it existed at the time the decree was entered, and therefore as was necessarily in the contemplation of the parties, and of the trial

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[1] Sec. 30-3-5, U.C.A. 1953; Walton v. Coffman, 110 Utah 1, 167 P.2d 97.

court, the only obligation it imposed upon the defendant was that he pay the $100 per month until his daughter Sherri was 18. Further, it is not shown that there has been any substantial change in facts upon which to justify changing the decree as so made and intended.

Other important facts in the total picture are: that the defendant has fulfilled the duties required of him by the decree; and that the effect of this decree is to impose an added burden upon him which he had no obligation to anticipate or plan for. It does not now confer any benefit upon his daufhter, but requires him to reimburse the plaintiff for three years' additional support at $100 per month, total $3,600, plus interest thereon. This is not consistent with the objective of an award of support money. Its purpose is to provide for the current and ongoing necessities of life for the dependent children; and it is not to provide a means for the accumulation of a burdensome debt upon one charged with the duty. Indeed under circumstances where the interests of justice dictate that it would be unfair or unconscionable to do so, the court may restrain the enforcement of such an accumulated debt. See Mason v. Mason, 148 Ore. 34, 34 P.2d 328; Franklin v. Franklin, 83 U.S. App. DC. 385, 171 F.2d 12; Wassung v. Wassung, 136 Neb. 440, 286 N.W. 340; Parenti v. Parenti, 71 R.I. 18, 41 A.2d 313. For the above stated reasons it is even more true that the court should not retroactively place such a burden upon the defendant.

Considering only the rights as between the plaintiff and defendant, in my judgment it is discordant to

principles of equity and justice to add such a substantial burden upon the defendant by an ex post facto change of the rules during the game. For these reasons, in addition to those stated in the main opinion and in the concurrence of Chief Justice Henriod, I join in the decision reversing the judgment.

MAUGHAN, Justice: (Dissenting)

This appeal challenges a judgment awarding $2,700 child support to plaintiff; together with interest and costs. The award was made, for a daughter of the parties; for a period ensuing after the eighteenth birthday of the girl, and culminating at her twenty-first birthday. We should affirm. Statutory references are to U.C.A. 1953.

In November of 1960, defendant, pursuant to a decree of divorce, was ordered to pay plaintiff $100 per month support payments for each of the minor children of the parties. There were two children, a daughter, who was born February 12, 1953; and a son, whose birth date was January 29, 1955. Upon the daughter attaining the age of 18 years, the father, defendant, ceased paying child support for her. Subsequently, the mother, plaintiff, filed a motion for entry of judgment against defendant for $2,700, the sum of which had accumulated since the eighteenth birthday of the daughter. The trial court denied the motion on the ground the obligation to support, under the decree, terminated at the time the daughter attained her majority, which

status was set forth in 15-2-1, U.C.A. 1953, as it then existed.

15-2-1 provided:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years.[1]

Plaintiff appealed to this court on the ground the statute created an unconstitutional classification in violation of the equal protection clause of the Fourteenth Amendment. This court found the statutory classification reasonable and affirmed the trial court.[2]

Plaintiff appealed the decision to the United States Supreme Court, which ruled the classification set by 15-2-1 denied equal protection of the laws, as guaranteed by the Fourteenth Amendment.[3] However, the court observed that its holding did not terminate the controversy as it was the prerogative of the state court to determine when defendant's obligation for his children's support pursuant to the divorce decree terminated under Utah law. The matter was remanded to this court, and in turn, the case was remitted to the trial court for further proceedings.

On appeal, defendant contends the trial court did

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1 This statute was amended in 1975, ch. 39, sec. 1, and currently provides: "The period of minority extends in males and females to the age of eighteen years; but all minors obtain their majorityl by marriage. It is further provided that courts in divorce actions may order support to age 21."

2 Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974).

3 Stanton v. Stanton, 421 U.S. 7, 43 L.Ed.2d 688, 95 S. Ct. 1373 (1975).

not have authority to order payment of child support after the child had attained the age of 18. Defendant urges two alternatives. First, this court may determine the constitutional infirmity does not invalidate the statute in its entirety; but rather, the statute may be construed to confer the benefit of emancipation, upon both classes male and female at the age of 18. Second, if this court determines there was no governing statute in effect, then the age of majority should be set at 18 years in conformity with the national trend.

Although the explicit reason for the action of the trial court is not set forth, its judgment can be sustained under two theories. It should be emphasized the invalidity of the statutory classification was strictly confined to its effect concerning child support, and the issue of the instant matter is so limited.

Under one theory, if the statute be deemed void, the common law "shall be the rule of decision in all courts of this state." (68-3-1) Under the common law both male and female attain their majority at the age of 21 years.[4]

Under the second theory, rather than invalidating the entire statutory scheme, where a classification has the effect of unreasonably granting a benefit to one class and denying it to another, the benefit may be extended to the excluded class. A reviewing court may correct a discriminatory classification by invalidating only the invidious exception or exemption and thus

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4 42 Am. Jur.2d, Infants, Sec. 3, p. 10.

extend statutory benefits to those whom the legislature improperly excluded.[5]

To extend the benefit of support to females to the age of 21 years is not at odds with legislative expression, or our society as it is. The obligation to pay support under a decree of divorce would coincide with the legal duty of every man and woman to support their children under the Uniform Civil Liability of Support Act.[6] This act defines a child as a son or daughter under the age of 21 years.[7]

After the inception of the matter here for decision, the enactment of 15-2-1 (L. Utah 1975) continued the legislative expression of the Uniform Civil Liability of Support Act, by providing that "courts in divorce actions may order support to age 21." It does such, to the exclusion of the stated ages of majority, therein.

The trial court had the authority to order payment of support, by defendant, for his daughter, beyond her eighteenth birthday. Costs should be awarded to plaintiff.

Tuckett, Justice, concurs in the views expressed in the dissenting opinion of Mr. Justice Maughan.

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[5] In Re Kapperman, 114 Cal. Rptr. 97, 522 P.2d 657 (1974); Harrigfeld v. District Court of Seventh Judicial District, 95 Idaho 540, 511 P.2d 822 (1973); Moritz v. Commissioner of Internal Revenue (C.A. 10th 1972), 469 F.2d 466.

[6] L. Utah 1957; 78-45-3, 4.

[7] 78-45-2(4).

IN THE SUPREME COURT OF THE STATE OF UTAH

Regular May Term, 1976 — June 23, 1976

Thelma B. Stanton,
Plaintiff and Respondent,
v.
James Lawrence Stanton, Jr.,
Defendant and Appellant.

REMITTITUR
No. 14268
Dist. No. 125233

This cause having been heretofore argued and submitted, and the Court being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the judgment of the District Court herein be, and the same is, reversed. Costs to appellant.

Regular May Term, 1976 — July 14, 1976

(UPON PETITION FOR REHEARING)

Upon consideration of the petition for rehearing heretofore filed herein, and the arguments of counsel thereupon had, it is ordered that the rehearing be, and the same is, denied.

Issued July 14, 1976

IN THE DISTRICT COURT OF
SALT LAKE COUNTY
STATE OF UTAH

THELMA B. STANTON, *Appellant,*		
vs.		Civil No.
JAMES LAWRENCE STANTON, JR., *Appellee.*		125233

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Thelma B. Wasescha, formerly known as Thelma B. Stanton, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Utah filed July 14, 1976, reversing an order of the District Court of Salt Lake County entered herein on September 8, 1975, insofar as it denied plaintiff judgment for accrued support money for the party's daughter, Sherri Lynn Stanton.

This appeal is taken pursuant to 28 U.S.C. §1257.

DATED this 29th day of September, 1976.

/s/ BRYCE E. ROE
WILLIAM G. FOWLER
340 East Fourth South
Salt Lake City, Utah 84111
Attorneys for Appellant

Supreme Court, U. S.
FILED
NOV 11 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-512

THELMA B. STANTON,
Appellant,

vs.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

MOTION TO DISMISS

D. GARY CHRISTIAN
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600 Commercial Club Building
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Salt Lake City, Utah 84111
Counsel for Appellee

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IN THE

Supreme Court of the United States

October Term, 1976

No. .....

THELMA B. STANTON,
Appellant,

vs.

JAMES LAWRENCE STANTON, JR.,
Appellee.

On Appeal from the Supreme Court of the State of Utah

MOTION TO DISMISS

OPINION BELOW

The opinion of the Supreme Court of the State of Utah is reported at 552 P.2d 112 (1976) and is set forth in the Appendix, *infra*, pages 1a through 12a.

FACTS

This case arises from a Decree of Divorce entered November 29, 1960 in the District Court of Salt Lake County, State of Utah, which awarded to appellant the care and custody of the minor children, Sherri Lyn and Rick Arlund and which ordered appellee to pay appellant One Hundred Dollars ($100.00) per month per child as

child support. On February 22, 1971, Sherri Lyn attained the age of eighteen whereupon appellee discontinued payments for her support.

On May 22, 1973 appellant filed a Motion for Judgment seeking recovery of the alleged delinquencies from February 22, 1971. The district court denied this Motion.

Appeal from this decision was taken to the Utah State Supreme Court on January 4, 1974, where the judgment of the lower court was affirmed. A Petition for Rehearing was denied on January 30, 1974.

Appellant appealed to this Court on the ground that 15-2-1, Utah Code Annotated (1953) violated the Fourteenth Amendment to the Constitution of the United States in that it discriminated against females because of their sex and, therefore, denied them equal protection of the laws. Notice of Appeal to this Court was filed on March 5, 1974.

This Court on April 15, 1975, entered its opinion in *Stanton v. Stanton,* 421 U.S. 7 (1975) holding that 15-2-1, Utah Code Annotated (1953) was unconstitutional. It reversed the decision of the Utah Supreme Court and remanded the case to the Utah Supreme Court for its determination of when appellee's obligation for his children's support, pursuant to a divorce decree, terminates under Utah law. The mandate awarded appellant the sum of Four Hundred Thirty-Seven and 38/100 Dollars ($437.38) for her costs of the appeal.

On June 6, 1975, appellant moved the Utah Supreme Court for a review of this Court's mandate, but the case was remanded, without directions, to the District Court of Salt Lake County for further proceedings.

On September 10, 1975, the district court determined that for purposes of support, children attain their majority at age 21, and entered an amended judgment for appellant in the amount of Two Thousand Seven Hundred Dollars ($2,700.00) as past due support money, together with interest thereon in the amount of Five Hundred Eight and 80/100 Dollars ($508.80), and Four Hundred Thirty-Seven and 38/100 Dollars ($437.38) awarded to appellant for her costs by this Court.

This judgment was appealed to the Utah Supreme Court and on June 23, 1976, that court reversed the district court's judgment.

The only question ever before any court was child support for the girl. Never, at any stage of these extended proceedings — State District Court, Utah Supreme Court or United States Supreme Court, — was child support for the boy ever in question. The Utah Supreme Court decided that for purposes of child support the age of majority for females is age 18 and that decision, by necessary implication, set the age of majority for males for the purpose of child support at age 18. The lower state courts have so interpreted the Utah Supreme Court decision and are now ruling in accordance with that interpretation.

Appellant's Petition for Rehearing was denied on July 14, 1976. Notice of Appeal to this Court was filed in the District Court of Salt Lake County, State of Utah, on September 29, 1976. Appellee received the Jurisdictional Statement on October 12, 1976.

POINT I

THE APPEAL FROM THE UTAH SUPREME COURT DECISION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Appellant contends that the Utah Supreme Court revalidated the constitutionality of former 15-2-1, Utah Code Annotated (1953) in violation of the mandate and decision of this Court, thereby raising a substantial federal question. On the contrary, not only does the state court decision not present a substantial federal question, but that ruling complied with the mandate and decision of this Court, the equal protection clause and the supremacy clause.

Rule 16(b) of the Supreme Court Rules states in pertinent part that:

> "The court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a *substantial federal question; . . .*" [Emphasis added.]

Attempts to define "substantial federal question" are legion; however, an outstanding synopsis of those decisions is provided by Justice White in *Hagans v. Lavine,* 415 U.S. 528, 536-537, 94 S.Ct. 1372, 1378-1379, 39 L.Ed. 2d 577 (1974):

> "The principle applied by the Court of Appeals — that a 'substantial' question was necessary to support jurisdiction — was unexceptionable under prior cases. Over the years the Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit.' *Newburyport Water Co. v. Newburyport,* 193 U.S. 561, 579, 24 S.Ct. 553, 557, 48 L.Ed. 795 (1904); 'wholly insubstantial,' *Bailey v.*

> *Patterson,* 369 U.S. 31, 33, 82 S.Ct. 549, 550-551, 7 L.Ed.2d 512 (1962); 'obviously frivolous,' *Hannis Distilling Co. v. Baltimore,* 216 U.S. 285, 288, 30 S.Ct. 326, 327, 54 L.Ed. 482 (1910); 'plainly unsubstantial,' *Levering & Garrigues Co. v. Morrin,* 289 U.S. 103, 105, 53 S.Ct. 549, 550, 77 L.Ed 1062 (1933); or 'no longer open to discussion,' *McGilvra v. Ross,* 215 U.S. 70, 80, 30 S.Ct. 27, 31, 54 L.Ed. 95 (1909). One of the principal decisions on the subject, *Ex parte Poresky,* 290 U.S. 30, 31-32, 54 S.Ct. 3, 4-5, 78 L.Ed. 152 (1933), held, first, that '[i]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question be presented'; second, that a three-judge court was not necessary to pass upon this initial question of jurisdiction; and third, that '[t]he question may be plainly unsubstantial, either because it is "obviously without merit" or because "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy." *Levering & Garrigues Co. v. Morrin, supra; Hannis Distilling Co. v. Baltimore,* 216 U.S. 285, 288, 30 S.Ct. 326, 54 L.Ed. 482; *McGilvra v. Ross,* 215 U.S. 70, 80, 30 S. Ct. 27, 54 L.Ed. 95. . . .' "

That explanation of "substantial federal question" applied to the facts of this case supports the conclusion that a substantial federal question does not exist because when the Utah Supreme Court held that in the context of child support the age of majority for females is age 18, that, by necessary implication, established an identical age limit for males, thereby erasing any question of equitable or equal protection that might have existed. In short, the previous decisions of this Court, together with the state court decision, "foreclose the subject and leave no room for the inference that the question sought to be raised

can be the subject of controversy." At this point in time, the appellant's claim is so "attenuated and unsubstantial" as to be devoid of merit. Witness the following analysis of the mandate and decisions of this Court and the subsequent state court decision.

This Court remanded the case in order that the state court could determine:

> "*when* the appellee's obligation for his children's support, pursuant to the divorce decree, terminates under Utah law."

The Court ruled that:

> "'• • • under any test — compelling state interest, or rational basis, or something in between — § 15-2-1, in the context of child support does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.'"

On remand, in the District Court of Salt Lake County, State of Utah, Judge James S. Sawaya held that:

> ". . . for purposes of child support, children attain their majority at age 21"

and

> ". . . ORDERED . . . that the plaintiff . . . recover from the defendant the sum of $2,700.00 as past due support money for the parties' daughter . . . together with interest thereon . . . and the sum of $437.38 awarded to her as costs by the United States Supreme Court. . ."

The exact basis for the trial court's action is not given; however, its judgment can be sustained under either of two theories presented by Justice Maughan in his dissent to the Utah Supreme Court decision.

> "Under one theory, if the statute be deemed void, the common law 'shall be the rule of decision in all courts of this state.' (68-3-1) Under the common law both male and female attain their majority at the age of 21 years.
>
> "Under the second theory, rather than invalidating the entire statutory scheme, where a classification had the affect of unreasonably granting a benefit to one class and denying it to another, the benefit may be extended to the excluded class. . . ."

The Utah Supreme Court appropriately reversed the trial court, rejected the notion that for purposes of child support the age of majority is 21 for males and females; and held that the defendant's obligation to support his daughter, Sherri Lyn, pursuant to the Divorce Decree terminated under Utah law at age 18. In that decision, written by Justice Ellett for the majority, the court determined that the constitutional infirmity of Section 15-2-1, Utah Code Annotated (1953) did not necessarily invalidate the statute in its entirety and proceeded to justify its conclusion in the following manner:

(1) That the only issue directly before the court was the age limit at which the defendant's obligation to support his daughter, Sherri Lyn, pursuant to the Divorce Decree, terminates under Utah law and its corollary whether the supplying spouse had a right to past due support money.

> "'. . . The age of the male child in this divorce case has never been called into question. Counsel for the ex-wife raises a question as to when the girl child became of age. . . .'"

(2) That former Section 15-2-1, Utah Code Annotated (1953) was comprised of two mutually independent pro-

visions ["Obviously the two provisions of the statute are separable . . ."]; namely, that

> " 'The period of minority extends in males to the age of 21 years and [the period of minority extends] in females to that of [age of] 18 years; . . .' "

(3) That applying the rule of construction recognized and articulated in *Dorchy v. State of Kansas,* 264 U.S. 286, 44 S.Ct. 323, 68 L.Ed 686, 689-690 (1924); namely, that:

> ["A statute bad in part is not necessarily void in its entirety. Provisions within the legislative power may stand, if separable from the bad. . . . But a provision inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it, and that the legislature intended the provision to stand, in case others included in the act and held bad should fall. . . . provides a rule of construction which may sometimes aid in determining that intent. But is an aid merely; not an inexorable command."

See also, *King v. State of West Virginia,* 216 U.S. 92, 30 S.Ct. 225, 54 L.Ed. 396, 401 (1910). The Utah Supreme Court, as long as it was consistent with the mandate and decision of this Court, was entitled to validate constitutional provisions of the statute separable from portions of the statute found to be unconstitutional.

(4) That, standing alone, legal effect could be given to that portion of the statute which terminates the obligation to support female children, pursuant to a Divorce Decree, at age 18:

> " '. . . The Supreme Court never held that she did not become of age when she reached the age of 18 years. . . .

> " '. . . One looks in vain for some provision of the Constitution which says a girl does not become of age at age 18, and so we must hold that a girl does reach her majority at that age.' "

that the Utah legislature intended that portion of former Section 15-2-1, Utah Code Annotated (1953) to stand:

> "The Legislature of Utah, in an attempt to satisfy the justices of the Supreme Court of the United States, passed an amendment to Section 15-2-1, U.C.A., 1953, so that it now reads:
>
> > "The period of minority extends in . . . females to the age of eighteen years; . . ."

and, that such statutory construction was consistent with the intent of the parties as expressed in the Divorce Decree.

> "That [divorce] decree is final and cannot now be changed. At the time the decree was made everybody knew that for almost one hundred years the age of majority for girls was and had been 18. . . ."

It is but proper respect to the wisdom, integrity and patriotism of the supreme judicial body of the State of Utah to presume in favor of the validity of its decision, until its violation of the Constitution is proved beyond a reasonable doubt. Under the searchlight of rational criticism it is evident that the state court decision is consistent with the mandate of their court: First, this Court ruled that "in the context of child support . . . no valid distinction between male and female may be drawn"; second, Article VI, Clause 2, United States Constitution (Supremacy Clause) reads:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every

> State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.";

third, there is no question that the supremacy of this Court's judicial power extends to this case. *Martin v. Hunter's Lessee,* 14 U.S. 121, 1 Wheat 304 (1816); *Cohens v. Virginia,* 19 U.S. 120, 6 Wheat 264 (1821); fourth, the Utah Supreme Court held that for purposes of child support the age of majority for females is age 18; fifth, *ipso facto,* the age of majority for males for purposes of child support is, of necessity, age 18; and sixth, the lower state courts have so interpreted the Utah Supreme Court decision and are now so ruling. Therefore, the state court has complied with this Court's mandate to determine "when the [supporting parties'] obligation for his [her] children's support, pursuant to the divorce decree, terminates under Utah law, and the substantial federal question which did exist is now resolved. In view of the absence of a substantial federal question, the appeal should be dismissed.

POINT II

DETERMINATION OF THIS APPEAL, OTHER THAN A DISMISSAL, WOULD VIOLATE THIS COURT'S POLICY AGAINST PREMATURE CONSTITUTIONAL ADJUDICATIONS.

Appellant argues, in the abstract, that the Utah Supreme Court has revalidated the constitutionality of former Section 15-2-1, Utah Code Annotated (1953) in violation of the decision of this Court that the statute violated the equal protection clause and was therefore unconstitutional. Such an argument is hypothetically feasible, especially if

one plays upon the superfluous, but bombastic, language of Justice Ellett. However, this Court has consistently ruled that "a hypothetical threat is not enough" *Electric Bond & Share Co. v. S.E.C.,* 303 U.S. 419, 58 S.Ct. 678, 82 L.Ed. 936 (1938); that a *real* issue must be present, in contract with a speculative, hypothetical or moot issue. For many years it has been the prudent policy of this Court's "considered practice not to decide abstract, hypothetical or contingent questions," *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450, 461, 65 S.Ct. 1384, 89 L.Ed. 1725 (1945); and, that a party may not maintain a suit "for a mere declaration in the air." *Giles v. Harris,* 189 U.S. 475, 486, 23 S.Ct. 639, 47 L.Ed. 909 (1903).

Clearly, any subsequent adjudication, at this time, would be premature and against the policy of this Court.

In *Republic Natural Gas Co. v. Oklahoma,* 334 U.S. 62, 68 S.Ct. 972, 92 L.Ed 1212, 1221 (1947) this Court stated:

> "The policy against premature constitutional adjudications demands that any doubts in maintaining this burden be resolved against jurisdiction. See citation of cases in the concurring opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 341, 345, 348, 56 S.Ct. 466, 80 L.Ed. 688, 707, 709 (1936).

In *Ashwander v. Tennessee Valley Authority,* at 711-712, we read:

> "2. The Court will not anticipate a question of constitutional law in advance of the necessity of deciding it. [Citations omitted] . . . It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case. [Citations omitted]

> "3. The Court will not formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied. [Citations omitted]
> . . .
>
> "4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. . . ."

Looking strictly to the issue before the Utah Supreme Court and its holding, putting aside the Barnumism and surplus language of Justice Ellett, it is evident that the state court complied with the mandate of this Court and that any questions which might arise out of that opinion are, at this time, conjectural, hypothetical and abstract. The Motion to Dismiss should be granted not only on the basis that any other action would be premature, but that a contrary decision would unnecessarily waste this Court's time, energy and taxpayer's money.

POINT III

APPELLANT'S CLAIM FOR COSTS AWARDED BY THIS COURT IS MOOT.

Appellant contends that the state court decision deprived her of costs awarded to her by this Court in the amount of Four Hundred Thirty-Seven and 38/100 Dollars ($437.38). This Court has explained in the past that it will not decide moot cases because "there is no subject matter on which the judgment of the court can operate." *Ex Parte Baez,* 177 U.S. 378, 390, 20 S.Ct. 673, 44 L.Ed. 813 (1900). A case may become moot because of some act of the parties which works to dissolve the controversy. *Commercial Cable Co. v. Burleson,* 250 U.S. 360, 39 S.Ct. 512, 63 L.Ed. 1030 (1919); *A. L. Mechling Barge Lines v. United States,* 368 U.S. 324, 82 S.Ct. 337, 7 L.Ed. 317 (1961); and *S.E.C. v. Medical Committee for Human Rights,* 404 U.S. 403, 92 S.Ct. 577, 30 L.Ed. 560 (1972).

The Utah Supreme Court decision did not deny appellant of costs awarded to her by this Court. Appellee recognizes that the Four Hundred Thirty-Seven and 38/100 Dollars ($437.38) awarded to appellant are due and owing and agrees to pay said amount. Accordingly, the controversy over that amount is rendered moot and any complaint which appellant might have had is laid to rest. For the same reason this Court should dismiss appellant's appeal.

CONCLUSION

The appeal should be dismissed and/or the judgment below affirmed for three reasons: First, appellant has failed to present a substantial federal question; second, at best, appellant has only presented a hypothetical argument. Appellant has not formulated a justiciable controversy that has had fruition in action of a definite and concrete character constituting an actual, imminent or likely interference with the mandate and decision of this Court, the supremacy clause or the equal protection clause; and third, the controversy as to court costs is moot.

The foregoing is sufficient to warrant this Court's dismissal of the appeal invoked pursuant to 28 United States Code, Section 1257(2) or in the event the Court does not consider appeal the proper mode of review, to deny a petition for certiorari taken pursuant to 28 United States

Code, Section 2103 or a motion and petition for a writ of mandamus pursuant to 28 United States Code, Section 1615 (a) and Rule 31, Rules of Supreme Court.

Respectfully submitted,

D. GARY CHRISTIAN
of
KIPP AND CHRISTIAN

IN THE SUPREME COURT OF
THE STATE OF UTAH

Thelma B. Stanton, *Plaintiff and Respondent,* v. James Lawrence Stanton, Jr., *Defendant and Appellant.*	No. 14268 FILED June 23, 1976

Allan E. Mecham, Clerk

ELLETT, Justice:

This appeal challenges a judgment awarding $2,700 child support to plaintiff; together with interest and costs. The award was made for a daughter of the parties for a period ensuing after her eighteenth birthday, and culminating at her twenty-first birthday. Statutory references are to U.C.A. 1953.

In November of 1960, defendant, pursuant to an original decree of divorce, was ordered to pay plaintiff $100 per month support payments for each of the minor children of the parties. There were two children, a daughter, who was born February 12, 1953, and a son, whose birth date was January 29, 1955. Upon the daughter attaining the age of 18 years, the father, defendant, ceased paying child support for her. Subsequently, the mother, plaintiff, filed a motion for entry of judgment against defendant for $2,700, the sum of which had accumulated since the eighteenth birthday of the daughter. The trial court denied the motion on the ground that the obligation to support, under the

decree, terminated at the time the daughter attained her majority.

Plaintiff appealed to this court on the ground that the statute[1] created an unconstitutional classification in violation of the equal protection clause of the Fourteenth Amendment. This court found the statutory classification and affirmed the trial court.[2]

Plaintiff appealed the decision of the United States Supreme Court, which ruled that the classification set by 15-2-1 denied equal protection of the laws, as guaranteed by the Fourteenth Amendment.[3] However, the court observed that its holding did not terminate the controversy as it was the prerogative of the state court to determine when defendant's obligation for his children's support pursuant to the divorce decree terminated under Utah law. The matter was remanded to this court, and in turn, the case was remanded by this court to the trial court for further proceedings.

The territorial Legislature of Utah in the lawful performance of its duty enacted Section 1035, C.L.U. 1876, which reads:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years;
> . . . .

The identical language has been carried in our law ever since.

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[1] Sec. 15-2-1, U.C.A. 1953.
[2] Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974).
[3] Stanton v. Stanton, 421 U.S. 7, 43 L.Ed. 2d 688, 95 S.Ct. 1373 (1975).

Obviously the two provisions of the statute are separable and the Supreme Court of the United States in remanding this matter directed that we decide which age was correct and then legislate a bit on our own and say that the age of majority so chosen for the one sex is also the age of majority for the other sex.

The oath we took when chosen as justices of the Supreme Court of Utah forbids us to encroach on the duties and functions of the legislature. However, we need not make any such determination. The age of the male child in this divorce case has never been called into question. Counsel for the ex-wife raises a question as to when the girl child became of age. The Supreme Court never held that she did not become of age when she reached the age of 18 years.

We have said too many times to require citations that a statute is presumed to be valid unless it clearly appears to be in conflict with some provisions of the Constitution. One looks in vain for some provision of the Constitution which says a girl does not become of age at age 18, and so we must hold that a girl does reach her majority at that age.

The Legislature of Utah, in an attempt to satisfy the justices of the Supreme Court of the United States, passed an amendment to Section 15-2-1, U.C.A. 1953, so that it now reads:

> The period of minority extends in males and females to the age of eighteen years; . . .

It thus is obvious that the statute holding that girls attained their majority at age 18 was unconstitutional.

The claim is made that a difference in the age at which a person attains majority is a denial of equal protection of the law. Even if that be true, the constitutionality of a statute can be raised only by one who had an interest in the lawsuit. Neither the boy nor the girl is a party to, nor intreested in, this matter. It is only the parents who are fussing about who is obligated by the decree to give support. There is no question about the fact that each child has been properly supported.

By our statute[4] both parents are charged equally with the duty to support and educate the children. The question before us is the interpretation to be given to the decree of divorce from which no appeal has ever been taken by either party. That decree is final and cannot now be changed. At the time the decree was made everybody knew that for almost one hundred years the age of majority for girls was and had been 18. The judge and the parties to this proceeding all assumed that when the decree stated that the father should be the one to furnish the support for the children during their minority it meant that the father should furnish the support for the son until he reached 21 and for the daughter until she reached age 18. No honest interpretation of that decree can be made to the contrary.

If the girl needs support after age 18, then if she be a minor, as claimed by the mother (which she is not), each parent is liable for her support and the burden cannot be cast upon just one of them.

If in a proper case it could be held that it is a denial of the equal protection of the law to recognize that there

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[4] 30-2-9, U.C.A. 1953.

is a difference in age when the sexes mature, would it not also be a denial of equal protection to enable a female to marry at age fourteen while the male in order to marry must be 16?

Regardless of what a judge may think about equality, his thinking cannot change the facts of life. The records of the marriage department in Salt Lake County show that 62 per cent of all women who get married do so between the ages of 14 and 21, while only 25 per cent of the men who marry are under 21 years of age.

To judicially hold that males and females attain their maturity at the same age is to be blind to the biological facts of life.

The order of the trial court is reversed and costs are awarded to the appellant.

HENRIOD, Chief Justice: (Concurring)

I concur in the main opinion's conclusion that this court cannot accept the decision of the lower court in determining in effect, apparently, that a female is a minor until she is 21, as to the right of support, simply because a male has been considered such by our legislature agencies ever since this writer's memory runs to the contrary not. I agree also, that the mandate of the U.S. Supreme Court may be well intended but is somewhat wanting in specificity, apparently inviting this court to set an age to determine when support for children ends in divorce cases. This, in my opinion, is not the luxury of this court, but that of the legislative branch, nor that of the common law, since by that law there appears to have been more than one

age for adulthood, with respect to males, females, criminals (of either sex), for being raped, statutorily or otherwise, etc.

Because this court upholds an award for support of a female child until she becomes 18, but not thereafter, certainly is no matter of res judicata as to the fact, therefore, that a male (who is not particeps here), is entitled to support, in a divorce, only until he is 18, — or that a female is entitled to support until she is 21, because he is so entitled.

The mandate of the U.S. Supreme Court is evidenced by its wording that:

> The appellee claims that any unconstitutional inequity between males and females is to be remedied by treating males as adults at age 18, rather than by withholding the privileges of adulthood from women until they reach 21. This is an issue of state law to be resolved *by the Utah courts on remand*. . . . The appellant, although prevailing here on the federal constitution issue, may or may not ultimately win her lawsuit.

Logic would seem to require that if this be the issue, it is just as much an issue, so far as constitutionality is concerned, to say that inequality "is to be remedied by treating males as adults at age 19.5, rather than by withholding the privileges of adulthood from women until they reach 19.5."

The courts of Utah did not set the ages of 21 and 18 respectively for males and females. A statute did that, and the remand mandate that the age of these people "is an issue of state law to be resolved by the Utah courts," historically has not been considered as an acceptable legal

concept by our State judiciary. Our Utah legislature has tried to satisfy the mandate of the U.S. Supreme Court by setting an age certain for both sexes as pointed out in the main opinion, and I am of the opinion that if this court literally carried out the Supreme Court's remand "for further proceedings in conformity with the opinion of this court," we could set the date of adulthood, and therefore that up to which support would be obligatory at 18, 19.5, or 26, — and thus fly in the teeth of our own legislature's already enacted legislative interdiction.

CROCKETT, Justice: (Concurring)

I concur, adding the following comments:

What seems to have been almost lost sight of here is that we are dealing primarily with a controversy between two parties: the plaintiff and the defendant; and only incidentally with a universality of law.

Focusing attention directly upon the rights of the parties as they are involved in this lawsuit, there are certain principles which should be considered and applied. In the first place, as has many times been said, matters relating to the family and the support of children are equitable.[1] Wherefore, the defendant, against whom this judgment is sought, is entitled to have the considerations of equity and good conscience examined and applied in his behalf.

At the time of the entry of the decree, which ordered the defendant to pay $100 per month for each of the minor

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[1] Sec. 30-3-5, U.C.A. 1953; Walton v. Coffman, 110 Utah 1, 167 P.2d 97.

children of the parties, our Statute Section 15-2-1, U.C.A. 1953, provided:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years.

It could not be plainer that under both the statutory and decisional law of this State as it existed at the time the decree was entered, and therefore as was necessarily in the contemplation of the parties, and of the trial court, the only obligation it imposed upon the defendant was that he pay the $100 per month until his daughter Sherri was 18. Further, it is not shown that there has been any substantial change in facts upon which to justify changing the decree as so made and intended.

Other important facts in the total picture are: that the defendant has fulfilled the duties required of him by the decree; and that the effect of this decree is to impose an added burden upon him which he had no obligation to anticipate or plan for. It does not now confer any benefit upon his daughter, but requires him to reimburse the plaintiff for three years' additional support at $100 per month, total $3,600, plus interest thereon. This is not consistent with the objectives of an award of support money. Its purpose is to provide for the current and ongoing necessities of life for the dependent children; and it is not to provide a means for the accumulation of a burdensome debt upon one charged with the duty. Indeed under circumstances where the interests of justice dictate that it would be unfair or unconscionable to do so, the court may restrain the enforcement of such an accumulated debt. See Mason v. Mason, 148 Ore. 34, 34 P.2d 328; Franklin v. Franklin, 83 U.S. App. DC. 385, 171 F.2d 12; Wassung v. Wassung,

136 Neb. 440, 286 N.W. 340; Parenti v. Parenti, 71 R.I. 18, 41 A.2d 313. For the above stated reasons it is even more true that the court should not retroactively place such a burden upon the defendant.

Considering only the rights as between the plaintiff and defendant, in my judgment it is discordant to principles of equity and justice to add such a substantial burden upon the defendant by an ex post facto change of the rules during the game. For these reasons, in addition to those stated in the main opinion and in the concurrence of Chief Justice Henriod, I join in the decision reversing the judgment.

MAUGHAN, Justice: (Dissenting)

This appeal challenges a judgment awarding $2,700 child support to plaintiff; together with interest and costs. The award was made, for a daughter of the parties; for a period ensuing after the eighteenth birthday of the girl, and culminating at her twenty-first birthday. We should affirm. Statutory references are to U.C.A. 1953.

In November of 1960, defendant, pursuant to a decree of divorce, was ordered to pay plaintiff $100 per month support payments for each of the minor children of the parties. There were two children, a daughter, who was born February 12, 1953; and a son, whose birth date was January 29, 1955. Upon the daughter attaining the age of 18 years, the father, defendant, ceased paying child support for her. Subsequently, the mother, plaintiff, filed a motion for entry of judgment against defendant for $2,700, the sum of which had accumulated since the eighteenth

birthday of the daughter. The trial court denied the motion on the ground the obligation to support, under the decree, terminated at the time the daughter attained her majority, which status was set forth in 15-2-1, U.C.A. 1953, as it then existed.

15-2-1 provided:

> The period of minority extends in males to the age of twenty-one years and in females to that of eighteen years.[1]

Plaintiff appealed to this court on the ground the statute created an unconstitutional classification in violation of the equal protection clause of the Fourteenth Amendment. This court found the statutory classification reasonable and affirmed the trial court.[2]

Plaintiff appealed the decision by the United States Supreme Court, which ruled the classification set by 15-2-1 denied equal protection of the laws, as guaranteed by the Fourteenth Amendment.[3] However, the court observed that its holding did not terminate the controversy as it was the prerogative of the state court to determine when defendant's obligation for his children's support pursuant to the divorce decree terminated under Utah law. The matter was remanded to this court, and in turn, the case was remitted to the trial court for further proceedings.

On appeal, defendant contends the trial court did not have authority to order payment of child support after

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[1]This statute was amended in 1975, ch. 39, sec. 1, and currently provides: "The period of minority extends in males and females to the age of eighteen years; but all minors obtain their majority by marriage. It is further provided, that courts in divorce actions may order support to age 21."

[2]Stanton v. Stanton, 30 Utah 2d 314, 517 P.2d 1010 (1974).

[3] Stanton v. Stanton, 421 U.S. 7, 43 L.Ed. 2d 688, 95 S.Ct. 1373 (1975).

the child attained the age of 18. Defendant urges two alternatives. First, this court may determine the constitutional infirmity does not invalidate the statute in its entirety; but rather, the statute may be construed to confer the benefit of emancipation, upon both classes male and female at the age of 18. Second, if this court determines there was no governing statute in effect, then the age of majority should be set at 18 years in conformity with the national trend.

Although the explicit reason for the action of the trial court is not set forth, its judgment can be sustained under two theories. It should be emphasized the invalidity of the statutory classification was strictly confined to its effect concerning child support, and the issue of the instant matter is so limited.

Under one theory, if the statute be deemed void, the common law "shall be the rule of decision in all courts of this state." (68-3-1) Under the common law both male and female attain their majority at the age of 21 years.[4]

Under the second theory, rather than invalidating the entire statutory scheme, where a classification has the effect of unreasonably granting a benefit to one class and denying it to another, the benefit may be extended to the excluded class. A reviewing court may correct a discriminatory classification by invalidating only the invidious exception or exemption and thus extend statutory benefits to those whom the legislature improperly excluded.[5]

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[4]42 Am. Jur. 2d, Infants, Sec. 3, p. 10.

[5]In Re Kapperman, 114 Cal. Rprt. 97, 522 P.2d 657 (1974); Harrigfeld v. District Court of Seventh Judicial District, 95 Idaho 540, 511 P.2d 822 (1973); Moritz v. Commissioner of Internal Revenue (C.A. 10th 1972), 469 F.2d 466.

To extend the benefit of support to females to the age of 21 years is not at odds with legislative expression, or our society as it is. The obligation to pay support under a decree of divorce would coincide with the legal duty of every man and woman to support their children under the Uniform Civil Liability of Support Act.[6] This act defines a child as a son or daughter under the age of 21 years.[7]

After the inception of the matter here for decision, the enactment of 15-2-1 (L. Utah 1975) continued the legislative expression of the Uniform Civil Liability of Support Act, by providing that "courts in divorce actions may order support to age 21." It does such, to the exclusion of the stated ages of majority, therein.

The trial court had the authority to order payment of support, by defendant, for his daughter, beyond her eighteenth birthday. Costs should be awarded to plaintiff.

Tuckett, Justice, concurs in the views expressed in the dissenting opinion of Mr. Justice Maughan.

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[6]L. Utah 1957; 78-45-3, 4.
[7]78-45-2(4).

MAILING CERTIFICATE

I hereby certify that I mailed three copies of MOTION TO DISMISS to Bryce E. Roe of Roe and Fowler, attorneys for appellant, Thelma B. Stanton, 340 East Fourth South, Salt Lake City, Utah 84111, this 10th day of November, 1976.

D. GARY CHRISTIAN
Attorney for Appellee,
James Lawrence Stanton, Jr.